

INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Walla Walla District

FILE NUMBER: NWW No. 062600065

REGULATORY PROJECT MANAGER: Eric M. Gerke **Date:** February 27, 2006

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** February 27, 2006
At the project site (Y/N) Y **Date:** February 9, 2006

PROJECT LOCATION INFORMATION:

State: Idaho

County: Ada

Center coordinates of site by latitude & longitudinal coordinates: Zone:11 North:4839923 East:540871

Approximate size of site/property (including uplands & in acres): >50 acres

Name of waterway or watershed: near the Middleton Canal

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands									
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)	X								
<u>Irrigation ditch and lateral</u>									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	X				
Is or would be used as habitat by other migratory birds that cross state lines?	X				
Is or would be used as habitat for endangered species?			X		
Is used to irrigate crops sold in interstate commerce?			X		

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary _____ Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite): McHenry Lateral is not jurisdictional because it is an isolated, non-navigable intrastate water with no nexus to interstate commerce. The Lateral terminates in uplands and does not flow into any other waters of the United States. The only source of water is from an irrigation canal and it has no apparent source of natural hydrology. Consequently, if irrigation water was no longer diverted into these irrigation facilities, it would revert to uplands. Also, these waterways are not subject to boating. Migratory birds probably use the irrigation facilities and they are most likely used to irrigate croplands sold in interstate commerce. However, there is no other evidence of its use in interstate commerce. Based on Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (531 U.S. 159 (2001)), isolated, non-navigable intrastate waters are not jurisdictional under the Clean Water Act, if the sole interstate commerce nexus is the use of such waters by migratory birds or other factors in the Migratory Bird Rule.